

In Illinois, construction contractors (including subcontractors) are deemed end users of tangible personal property purchased for incorporation into real property. See 86 Ill. Adm. Code 130.1940 and 130.2075. (This is a GIL).

February 8, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated January 12, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

If at all possible, would you please send me, via fax at #### or mail to my attention at the CITY address on this letterhead, answers to the following questions regarding the application of your state's law:

1. Is the service of installing tangible personal property subject to sales tax?

If the answer to question 1 is 'yes',

2. Is there an exemption for the installation of: printing presses?____ Manufacturing equipment?_____
3. Must a company pay sales tax on its purchase of parts and materials used in connection with the installation of tangible personal property? _____

If yes, would the purchase of parts and materials be exempt if the tangible property being installed was for: printing presses? _____ Manufacturing equipment?_____

I appreciate your help with this matter.

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of construction contractors in Illinois. The term construction contractors means any person or persons engaged in the occupation of entering into and performing construction contracts for owners. This includes general contractors, subcontractors, and specialized contractors.

In Illinois, construction contractors (including subcontractors) are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property, and they have no legal authority to charge their customers a "tax." Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors do not pay the Use Tax to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

There are very limited exemptions for contractors under the Use Tax Act. For instance, in Illinois, organizations that are determined by the Department to be exclusively charitable, religious, educational, or a governmental body, are issued tax exemption identification numbers ("E" numbers). Organizations holding such numbers are exempted from paying sales tax on organizational purchases. Contractors who physically incorporate tangible personal property into real estate owned by holders of "E" numbers can purchase such property tax-free by providing their suppliers with the certification described in Section 130.2075(d), as well as the "E" number of the group into whose real estate that property will be incorporated. The suppliers should retain this information in order to document the tax-exempt sale. Sales of tangible personal property to a construction contractor who does not incorporate the items into real estate owned by an exempt organization are subject to tax.

Construction contractors incur Retailers' Occupation Tax liability when they engage in selling any kind of tangible personal property to purchasers without permanently affixing the tangible personal property to real estate. See 86 Ill. Adm. Code 130.1940(b)(1). Construction contractors can purchase such tangible personal property tax-free for resale by providing their suppliers with Certificates of Resale. See 86 Ill. Adm. Code 130.1405, enclosed. Their suppliers must retain certificates of resale in order to document the resale exemption.

Construction contractors who sell tangible personal property must either pay tax or document an exemption. The graphic arts machinery and equipment exemption is available for sales of machinery and equipment meeting the requirements of 86 Ill. Adm. Code 130.325. The manufacturing machinery and equipment exemption from sales tax is available for sales of machinery and equipment used primarily in the manufacturing or assembling of tangible personal property for wholesale or retail sale or lease. See the Department's rules for this exemption set forth at 86 Ill. Adm. Code 130.330, copy enclosed. The process must meet the requirements of manufacturing or assembling set forth in the Department's rules. In addition, the machinery or equipment must be used primarily (over 50% of the time) in a qualifying manufacturing or assembling process. Exemption certificates must be executed by the purchaser and submitted to the retailer. Form ST-587, Machinery and Equipment Exemption Certificate, may be used to document the manufacturing machinery and equipment exemption.

The equipment must also meet the requirements of machinery or equipment set forth in the Department's rules. Please note that Section 130.330(d)(4)(H) provides that "[t]he use of machinery or equipment for general ventilation, heating, cooling, climate control or general illumination, not required by the manufacturing process" will generally not be considered to be manufacturing.

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Machinery and equipment of this type would only qualify if required by the manufacturing process.

In the context of sales to contractors who will incorporate qualifying machinery and equipment into real estate as part of a construction contract, purchasing contractors should provide their sellers with certifications that the machinery will be transferred to a manufacturer as manufacturing equipment in the performance of a construction contract for that manufacturer. Purchasing contractors should include the manufacturer's name and registration number to claim the exemption.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.